

# **Houston: Planning for Urban life without Zoning**

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By

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# Houston: Planning for Urban life without Zoning

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## Abstract

*Houston, Texas is famous for a number of reasons, but within the field of urban planning it is infamous for not having zoning or a comprehensive plan. Houston challenges the popular belief that a city must have zoning to achieve desirable planning goals. It challenges this belief, because the city does manage to achieve economic growth and housing affordability both of which are common goals of the planning profession. This thesis analyzes how Houston has achieved desirable planning outcomes without zoning?*

*In short, the answer is Houston's method of land use regulation solves the nature of the problem that zoning is intended to solve, but uses a bottom-up approach as opposed to a top-down approach. Zoning and Houston's method of land use regulation are a response to the inability of cities to overcome the problem of collective action in the wake of market failures. To establish this relationship, first, we will consider the purpose and function of traditional zoning. Then we will look at Houston's approach and how it deviates from this established norm. Next, a case study will be presented, followed by a discussion comparing the advantages and disadvantages to each approach. The conclusion will cover what lessons can be learned from Houston's land management strategy and what future research questions logically follow from the research of this thesis.*

## 1) Introduction

There is a popular belief among urban planners that because Houston, Texas does not have a formal zoning ordinance, the city is incapable of planning. (Mixon 2011) Furthermore, Houston lacks a general or comprehensive plan, which indicates that the city also does not have a formal land use strategy. General plans and zoning are believed to be synonymous with planning because zoning is the planner's primary tool for achieving the goals and objectives established by the general plan.

Houston's style of development and land management challenges the conventional wisdom that zoning is necessary to achieve "good" planning practices as defined by *Urban Land Use Planning*. (Kaiser et al 2006) The tenants of good planning lie within the planner's ability to negotiate the tensions between competing goals. Good planning practices seek an optimal balance between the goals of livability, ecology, economy and equity. To this end, planners have historically used the tool of zoning to guide economic development in a

manner that increases equity and minimizes environmental impacts. Houston, even without zoning, has had great success realizing the good planning goals of economy and equity but has neglected livability and ecology.

In January 2015, Forbes published an article declaring Houston the "fastest growing city in America." This annual list is based on five factors: population growth, local GDP growth, year-to-year job growth, the unemployment rate and median annual income. Houston posted a population growth rate of 1.81% in 2014, a job growth rate of 4.5%, local GDP growth of 3.52%, an unemployment rate of 4.8% and a median pay of 71,900 respectively. (Carlyle, 2015) These statistics are largely the byproduct of an economic boom in oil and gas production. The introduction of new techniques and technologies has decreased investor risk while enabling consistent oil and gas production. The most notable of these techniques is the use of hydraulic fracturing. According to a recent article in the New York Times, this economic boom has allowed Houston to attract new residents at an unprecedented pace, many of

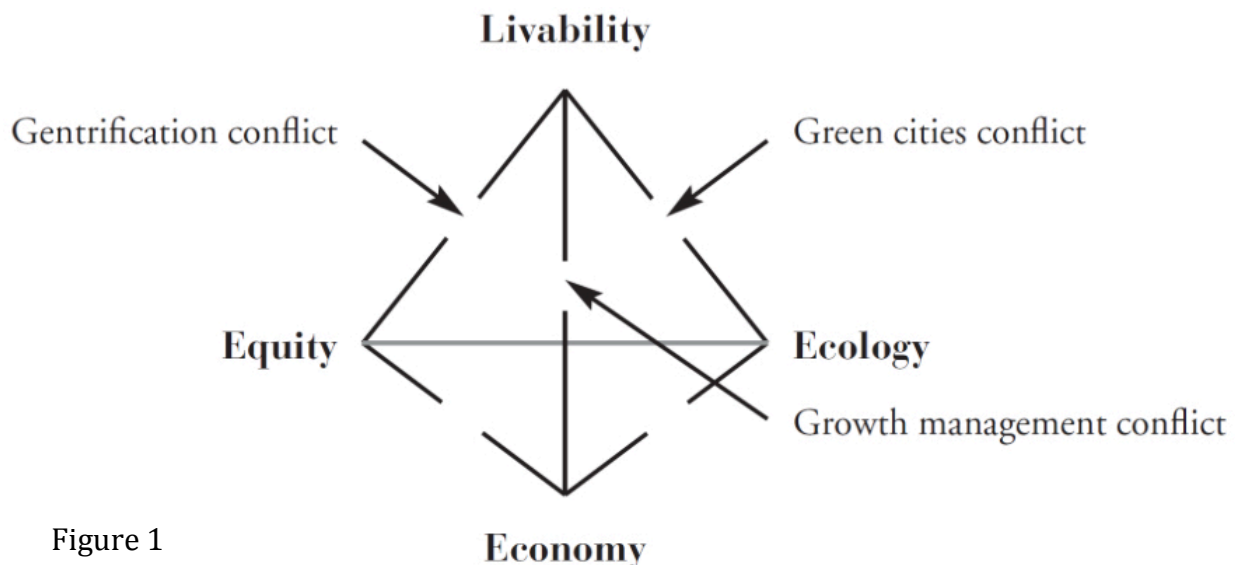


Figure 1

whom are young college graduates, an often coveted demographic. Among the top five cities attracting this coveted demographic commonly referred to as the millennial generation, Houston is the only one without zoning or a general plan to guide development. The other four cities, Nashville, Austin, Denver and Portland, have employed explicit strategies considered by many urbanists to be “best” practices for attracting young college graduates. These best practices consist of some combination of the following: increasing transportation and mobility options via public transit, increasing density and walkability downtown, building mixed-use live-work neighborhoods, providing a mix of housing types, increasing availability of public amenities such as museums, parks and greenbelts, and promoting environmental conservation. These objectives are validated by survey data from the professional survey company Neilson and align more closely with the good planning goals of livability and ecology than those of economy and equity.

It has yet to be determined whether or not the strategy of attracting young professionals will lead to long-term economic growth (creative class theory); nevertheless, the initiatives used to attract young professionals have placed upward pressure on area home prices. In 2014, the Houston metropolitan area’s median sales price for a single-family home was \$198,000, while Austin, Denver, Portland and Nashville had median single-family home prices of \$240,000, \$310,000, 286,000 and \$183,000 respectively. Though Nashville had a lower median home price than Houston in 2014, as recently as 2012, Houston’s average annual wage adjusted cost of living was \$75,256, while Nashville’s was \$59,787 (Kotkin 2013). This suggests it may be

cheaper to live in Houston than Nashville, despite Houston’s higher home prices. The fact that Houston is attracting millennials at a faster rate than its aforementioned competitors shows that the good planning goals of economy and equity may outweigh those of livability and ecology (Miller 2014). Regardless, it cannot be denied that Houston is achieving some goals generally considered as desirable outcomes of good planning. This brings us to the question at the heart of this thesis: How has Houston achieved desirable planning outcomes without zoning?

First, we will consider the purpose and function of traditional zoning. Then we will look at Houston’s approach and how it deviates from this established norm. Next, a case study will be presented, followed by a discussion comparing the advantages and disadvantages to each approach. The conclusion will cover what lessons can be learned from the Houston case and pose future research questions that logically follow from the research of this thesis.

## 2) Zoning

### History of Zoning

Zoning came about in 1916 when New York City became the first US city to adopt a comprehensive citywide zoning ordinance as a tool for mitigating negative health effects from undesirable uses. Historically the goal of zoning was to separate land uses to limit the negative impacts of industrial and manufacturing businesses on residences. Some of the negative aspects of living near industrial uses are noise, smoke, dust, fire hazards, pollution, and psychological and aesthetic effects deemed

harmful to the well-being of a city's residents. Zoning is a way to ensure that any nuisances caused by these undesirable uses are mitigated and ideally avoided all together. Zoning provides a mechanism for solving a variant of the *tragedy of the commons*, a theory that proposes that individuals acting in their own rational self-interest will do things harmful to the group as a whole (Kaiser et al 2006). Garrett Hardin coined the term and intended for the 'commons' to refer to the depletion of resources; but in this scenario, the commons refers to the space we share. It may be rational from an economic perspective (because the price is low) to build a factory inside a residential block, but this would negatively affect the group or neighborhood as a whole.

The practice of zoning was validated from a legal standpoint in 1926, when the Supreme Court ruled on the Village of Euclid, Ohio v. Ambler Realty Co. This landmark case set a precedent that has allowed zoning to become a ubiquitous instrument used by nearly every major U.S. city, with the exception of Houston, to ensure the health and safety of the city's community. The court found zoning to be a rational and an acceptable use of the police power (Festa 2013).

## Basics of Zoning

This section elaborates on the concept of zoning and provides a basic understanding of how it works, its purpose and the various functions it can serve for cities. As previously mentioned, the original purpose of zoning was to separate incompatible uses. This is a commonly accepted practice that is used nationwide and is usually created in accordance with a city's

general or comprehensive plan (Mixon 2011). In many cases, there will be a series of plans nested within one another. Depending on the arrangement of the government, the plans could follow some version of the following logic: a regional plan is created prescribing broad overarching goals for the region, next each city or county, depending on which is larger and where the proper authority lies, creates a more detailed plan with policies and goals geared towards accomplishing the regional goals but on a citywide scale. Responding to these plans, neighborhoods may create their own district wide plan, and small area plans may even be created to cover just a few blocks within a neighborhood. The goal is to achieve vertical consistency within the network of plans, resembling an urban quilt of diverse neighborhoods.

Zoning is one of the main tools used to carryout the goals and objectives of the general plan. An area may be zoned for a wide variety of uses, but there are five to six generally accepted land classifications common to most cities. These classifications are residential, commercial, industrial, conservation (open space and parkland), special and mixed use. Each category can have multiple subclasses. For instance, within residential zones, some areas will be designated for single-family detached homes, other areas for multi-family attached row house style homes and others for high-rise apartment buildings. When zoning first became popularized in the 1930's, it was often referred to as Euclidean zoning because Euclid was the victor in the previously mentioned case, Euclid v. Ambler. Euclidean zoning is also known as single-use zoning. However, planning has evolved and mixed-use zoning is becoming more

popular among planners and urbanists.

Within mixed-use zones or districts, there may be some combination of residential, commercial and retail stacked on top of one another and hopefully some parkland or public plaza space nearby. Certain uses are still prohibited within these mixed-use districts, but the goal is to promote a vibrant and walkable urban space that is more flexible in terms of opportunity for different uses than the rigid Euclidean style zoning of the past.

Beyond setting up districts and designating land uses, modern zoning regularly specifies qualities pertaining to the physical environment, including set backs from the street, sidewalk widths, height, bulk and footprint a building can occupy. Some codes, referred to as form-based codes, set very specific design guidelines for the façades aesthetic quality, window heights, the provision of light and air, the layout of parking spots, and placement of trees and benches. Basically, every aspect of the physical environment can be in some way subjected to or shaped by a form-based code. Even details such as the shape of the lip of each stair or the slope of a staircase may be the subject of a form-based code. For example, New York City has a whole host of design guidelines recommending ideal staircase design.

With such rigorous standards and limitations, exceptions must be made; these exceptions are known as a variance. The department of city planning or some other regulatory body oversees the compliance with the zoning code and will regularly approve variances. Today zoning has become complicated and includes numerous variations

and philosophies for creating and implementing the ideal code for any given context. Some popular movements related to zoning are the transect method, use-based codes, SMART codes and intelligent urbanism, all concentrating on how to best arrange our cities and ultimately achieve the goals set out in the general plan. Houston has neither a general plan nor a formal zoning ordinance. In light of this fact, Houston's management of land uses in the absence of zoning is the focus of the following section.











Figure 2

two things, first that no person or group can be excluded from its use and that consumption of the good does not prevent others from also consuming it. Zoning is widely considered to be a public good in that everyone has access to zoning, and that one person's use of zoning does not diminish another person's ability to use it. Similarly, deed restrictions also function as a public good, in that they are not excludable. Any neighborhood that achieves at least a 60% vote from homeowners on a given block will receive deed-restricted status. Deed restrictions are also non-rivalrous because one block receiving deed-restricted status does not prevent any other neighborhood block from receiving similar restrictions. The fact that zoning and Houston's style of land use regulation are administered as public goods is important to keep in mind throughout the following discussion on collective action.

### Collective Action

The collective action problem is one where a group would all benefit from a certain action or policy outcome, but no single individual is directly burdened enough to take action. And even if they did take action, the cost would be high and the individual would not have enough leverage to change the outcome. Consequently, it would require collective action to change the outcome, meaning a sufficient number of individuals and groups who are all being negatively affected must come together and agree on a preferred outcome. Because each individual is only minimally affected by the undesired outcome and the transaction cost of achieving a sufficient level of collective action is greater than the benefit of a winning outcome, it is often irrational to attempt collective action in

## 4) Public Choice Framework

Public choice theory is primarily focused on the provisions of public goods but can be applied when thinking about private goods as well. Public goods are those that are not excludable and are non-rivalrous. This means

the first place.

Free riders exacerbate the problem of collective action. Free riders are those individuals who will benefit from the collective actions taken by others, specifically in the provision of public goods, but do not help supply or pay for the good but instead free ride. (Olson, 1965) The problem of free riding gets worse as the size of the group increases, making collective action more difficult. Conversely, if the group is small then the incentive to free ride diminishes and collective action is easier. The relationship that governs this trade-off is one of concentrated benefits versus diffuse cost. The more people that need to coordinate to solve a particular collective action problem, the higher the transaction cost and the less each individual will be negatively affected by a losing outcome, thus increasing the incentive to free ride.

This suggests a threshold may exist where collective action makes rational sense for small groups, where each individual has a large enough stake to take action. The transaction cost is low because group coordination is easier within smaller groups. However, as group size increases and collective action becomes more difficult to achieve, eventually a threshold will be crossed where collective action no longer seems viable or rational. When the group becomes too big, the individual benefits to overcoming the problem are too small and there is an incentive to free ride. It is important to keep in mind that free riders will not exist in situations where participation is required to receive benefits, as is the case with most private goods. (Olson, 1965)

The free rider problem and the theory of the tragedy of the commons are just two of the

many types of market failures associated with the provision of public goods. In most cases, these market failures result in government intervention, unless they can first be resolved through collective action. In sum, many government programs and institutions especially at the municipality level have been created as a result of society's inability to achieve collective action in the wake of market failures.

The following example illustrates the nature of the collective action problem that arises as a result of market failures associated with the tragedy of the commons. An industrial plant opens up downstream from a town and begins dumping waste into the river affecting the health of a large majority of the town's people, many of whom help operate the factory, most residents are angry but no one has died and everyone is being affected but only mildly. Everyone in the town, with the exception of the plant's owner and a few of the higher ups, agrees that something must be done about the plant dumping its waste in the water supply. But, no one can agree on the proper solution. If the town's people could come together with one agreed upon strategy, they would have enough leverage to run the plant out of town. One solution would be to organize a boycott and refuse to work for the plant. However, no solution can be agreed upon and collective action is not achieved. The alternative solution is to empower the government to intervene on the public's behalf by using zoning or another mechanism that accomplishes the same outcome.

The creation of land management controls such as zoning are a response to market failures like the one described in the example above. In that particular example, the waste being dumped into

the water poses a risk to the public health, but the size and scale (citywide) of the issue is too large to be solved through collective action. Therefore, it is rational to use a top-down zoning mechanism to mitigate the market failures and negative externalities on behalf of the public. The use of zoning has been successful in alleviating the collective action problem. The government uses its police power, which if called upon is often enforced by the courts, to solve the collective action problem. The government seeks to solve the collective action problem in order to implement good planning practices that strike the optimal balance between economy, equity, ecology and livability. Though zoning is the most popular approach, Houston's system of regulating land uses solves the collective action problem using a bottom up framework.

The previous section relating to Houston's land use regulations concludes by saying that the twin tools of deed restrictions and the ordinance code accomplish the two primary goals of zoning, to separate incompatible uses and to raise property values while maintaining the character of the community for the future. Though Houston's approach differs from the traditional one of zoning, it appears to achieve a similar result.

The key to the effectiveness of deed restrictions in solving the collective action problem goes back to the notion of concentrated benefits versus diffuse cost. The benefits from receiving deed-restricted status can be tremendous, both in monetary terms and in terms of preservation. Furthermore, the cost of attaining deed-restricted status is not spread over a large group, and everyone on the block stands

to gain substantially from becoming a deed restricted block. Additionally, Houston's process for enacting deed restrictions allows for easy coordination and cooperation on a scale that is manageable. The combination of small group size and large benefits from achieving collective action discourages individuals from being free riders.

Another reason the deed restrictions process is successful is because the structure of these groups is reinforced through civic groups and strong neighborhood ties. Thus, neighbors are able to hold one another accountable. In general, the ability to coordinate with the neighbors on your block is an easier collective action problem to overcome than those where the affected persons are unconnected to one another.

As for Houston's ordinance code, it functions similarly to a performance zoning code. (Goldstein 2004) In essence, ordinances are a top-down mechanism enforced by the Department of Planning and Development that are intended to serve the original purpose of zoning, to mitigate the negative affects of incompatible uses on nearby residences. But instead of governing by land use in designated districts, the ordinance code governs by function or performance. Regardless of the use, if occurring in a residential neighborhood and causing a nuisance or posing a public health risk to residents, it is likely subject to one or more ordinances within the city's code. Performance-zoning codes are often considered to be more flexible than traditional zoning ordinances and can be administered in a more targeted way than traditional zoning ordinances, mostly because the actual zones or districts are irrelevant. It is about regulating the attributes of the use, rather than

the use itself. In this way Houston's ordinance code resembles traditional zoning practices that inherently solve the collective action problem because the city government enforces the code.

Another reason why Houston's method of land use regulation solves the collective action problem is the faith it places in market-oriented solutions. The city is willing to tolerate an occasional market failure, relying on the long-term view that the market will eventually adjust and self-regulate. Admittedly, this is not an entirely novel perspective, as many cities place faith in markets. However, Houston stands apart from the rest because of its patience to "wait and see what happens." Whether or not you believe that the market helps solve the problem of collective action is based on whether or not you believe that market forces self-regulate in a desirable way, as in the invisible hand scenario, or you believe unregulated capitalist markets will inevitably lead to the tragedy of the commons scenario. It is probable that the two conditions exist simultaneously, but on balance, which is having the stronger effect.

The public policies of Houston reflect its belief that individuals motivated by their own rational self-interest can produce benefits for society at large. Therefore, if regulations are a response to the failures of groups to achieve collective action in the presence of negative externalities caused by market failures and the tragedy of the commons is an example of such a market failure. Then the opposite is likely true, meaning that if the invisible hand is at work then it produces positive externalities by way of market corrections, thus as a result helps solve the problem of collective action.

Recently Houston's resolve was tested and some residents, experts and media personalities were clamoring for the city to enact a citywide zoning ordinance. Yet, in many ways the Ashby High Rise development, which is the focus of the next section, is a testament to the city and its resident's conviction that bottom-up collective action produces better results than top-down planning regimes.

## 5) Ashby High Rise Case Study –

In 2007, Buckhead Investment Partners acquired Maryland Manor, an old garden apartment on the corner of Bissonnet and Ashby along a low-rise commercial corridor. Their original plan was to construct a 23 story multi-use development consisting of a five-level parking garage and 18 floors of apartments. Even though the proposed structure was allowed as of right, residents in the nearby single-family neighborhoods objected to the project. The opposition arose immediately after the developers had informed the neighborhood association of its plan for the site. The court describes the pushback as "rapid and intense;" a neighborhood group called "Stop Ashby High Rise" was formed with protesters at the site and numerous signs opposing the project were posted throughout the adjacent neighborhoods. (Wilson 2014) A website was also created to help community members and residents get involved and follow the project's progression.

On September 21<sup>st</sup>, 2007, the city responded to the neighborhood outcry by rescinding a previously approved permit, which had approved Buckhead's Traffic Impact Analysis for the site. From this moment on, what

had been a painless collaboration between Buckhead and the city, turned into a never-ending battle of permit submissions and subsequent denials. The city government was committed to using every available tool at their disposal to bring the project to a screeching halt. In one of the many efforts to thwart the project, the city began drafting an “emergency” High-density ordinance directly aimed at the Buckhead development. There was one problem with this strategy; the project had vested rights that had been created prior to the passage of the ordinance. In light of this fact, the city council scrapped the emergency high-density ordinance. This left the city council with few available options. As the city council became more and more desperate, it looked for new and innovative ways to block the project.

Ultimately, a new interpretation of the Driveway Permit Ordinance was used to successfully halt the project. This obscure ordinance was rarely, if ever used, but a re-interpretation by the city council once again derailed the Ashby High Rise development. The original site design included a public plaza, a pedestrian friendly environment that helped mesh the apartment building with the existing neighborhood, as well as a spa and other commercial office uses. To conform to the city councils new interpretation of the Driveway Permit, Buckhead had to remove the public plaza, spa and some of the planned commercial office developments from its site design.

However, Buckhead reserved the right to appeal previous permit denials for the original

site design, but the appeals process did not yield better results. After all of their options had been exhausted,, Buckhead Investment Partners filed a suit against the city on the basis that previous permit applications had been wrongfully denied. “The action was originally filed in the 151st District Court of Harris County, but was subsequently removed to federal court by the City of Houston.” (Wilson 2014) In February of 2012, the federal action was settled and a compromise was struck between the city and the developers. The developers agreed to dismiss the lawsuit after receiving permit approvals for a design that closely resembled their original plan, with the notable exception that the building be only 21 stories and not 23 stories as was originally proposed. (Wilson 2014)

Nevertheless, this is not the end of the Ashby High Rise story. City hall had been defeated, despite its many attempts to use various interpretations of the local ordinance code to inflict zoning-type controls on the Ashby development, (Mixon 2011) but neighborhood residents were not deterred. On May 1<sup>st</sup>, 2013, six residents filed suit seeking damages and a permanent injunction to stop the project. During the six months before the case went to trial, another 39 plaintiffs had joined the suit, bringing the total number of homes to 30. On November 19<sup>th</sup>, 2013, the trial commenced and ended on December 17<sup>th</sup>, with the jury verdict awarding 20 of the 30 residents damages of up to \$1.6 million dollars but denied their motion for injunction. The final judgment issued by Judge Randy Wilson found that the new construction would constitute a nuisance and had already lowered property values and to that end awarded \$1.2 million to the 20 residents who lie in close

proximity to the proposed development (see Figure 3). However, the Judge disagreed with the claim that residents would experience “loss of use and enjoyment of their property” and removed any money that was to be paid out based on that claim. He also denied the plaintiff’s application for injunction.

*“If an injunction was issued, then a judge can become a one man zoning board with little criteria...even after developers obtained a building permit, developers would have no idea whether a proposed project would pass judicial scrutiny.”*

Hon. Randy Wilson  
Judge 157th Dist. Court

There are many interesting takeaways from this case, and it will be fascinating to see the long-term ramifications of this court decision. However, there are two takeaways that are most relevant to this thesis. First, this case demonstrates that the city did not have the proper authority or mechanism to stop or regulate the project in a way that would have created an acceptable outcome for both the developer and the residents. Second, this case shows that the residents were able to solve the problem of collective action and receive a verdict that will likely have a significant effect on similar developments.

With respect to the first takeaway, in a city with zoning, such a structure would probably never have been permitted in the first place. Even if the commercial corridor were zoned for higher densities, that would likely mean 8 to 10 floors at the most. Traditionally areas are zoned in a gradual step-function going

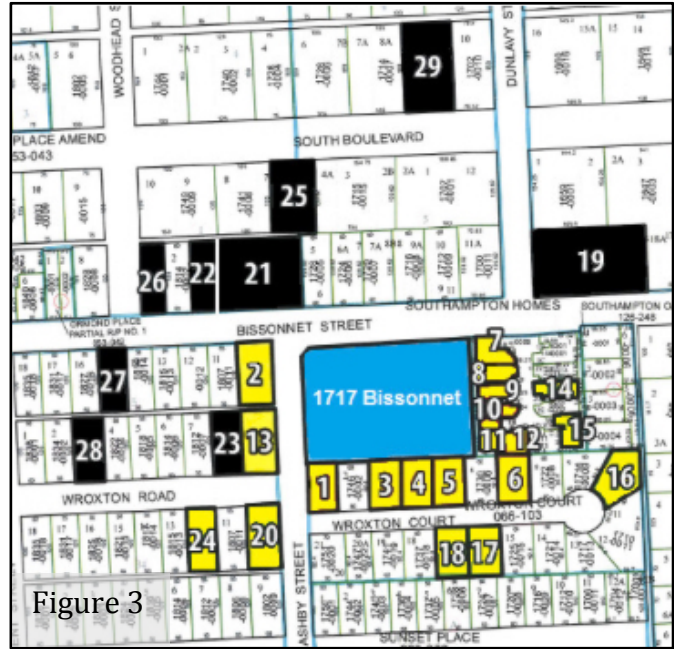


Figure 3

from low to high. A two-story neighborhood might have a five-story garden apartment next door, and the garden apartment might have a 12-story office tower next door to it, but the jump from a one-story detached single family home to a 23-story tower would be uncommon in all cities with a few exceptions, most notably Los Angeles. This reveals one of the potential flaws of Houston’s land management approach; the current regulatory structure is one of two extremes. In places that do not have deed restrictions, there are few limitations and design standards to guide development. While at the same time, many deed-restricted neighborhoods have rules that are far more restrictive than would apply with a typical zoning code (Wilson et al, 1993).

With respect to the second takeaway, the structure of Houston’s land use regulations empowered the residents to solve the problem of collective action, and as a result, most residents are not calling for zoning. This particular development was allowed to go through, but



similar developments in other neighborhoods now know that citizens have the option of legal action. Even if they do not win, the process of legal action could severely delay the project, while adding cost. As a result, local developers will need to be savvier and smarter about working with local civic groups in earlier stages to avoid lengthy litigation and community backlash. Furthermore, the entire process reflects Houston's bottom-up planning approach and harkens back to the invisible hand versus the tragedy of the commons debate. The fact that widespread calls for zoning have not occurred as a result of this case suggest that the city still believes that individual actors following their own self-interest can create societal benefits for the public at large, and in the long run will solve the same problems zoning is meant to solve.

We have seen how both traditional zoning laws and Houston's deed restrictions and ordinances address the problem of collective action. Now, we will compare the advantages and disadvantages of each land management strategy.

## 6) Comparison –

In this section, seven criteria will be used to assess the advantages and disadvantages of zoning versus Houston's method of land use regulation. These criteria are set forth below:

- I. Facilitates the separation of undesirable uses
- II. Protects property values and ensures preservation of neighborhood character
- III. Helps achieve the goals of good planning, specifically economy, equity, ecology and livability
- IV. Hinders or encourage market forces
- V. Allows for flexibility over the short and long run
- VI. Issues of governance
- VII. Conflict resolution

These criteria were chosen for a multitude of reasons, ranging from previous academic literature on the subject to personal research and experience.

## **I. Facilitates the separation of undesirable uses:**

**A) Zoning** – Zoning does a good job of separating incompatible uses, but can be overly cautious about what uses are incompatible. As technology advances, the attributes of a particular use can change, making old assumptions about what characterizes a particular use seem parochial.

**B) Houston** – The combination of the market mechanism and the city's code of ordinances together do a good job of separating incompatible land uses. The ordinance code functions similarly to performance zoning in respect to regulating land uses, making it flexible and easy to administer. The one drawback is the ordinance code is not that rigorous and is adapted after the fact. It is only after residents have already been negatively affected by an incompatible land use that the city will amend the code to cover that particular circumstance.

## **II. Protects property values and ensures preservation of neighborhood character:**

**A) Zoning** – Traditional zoning is exceptional at protecting property values and preserving a neighborhood's character. The exception here is that zoning districts can be changed often without any say from local residents based on the city's growth management strategy, which may run counter to the desire of a particular neighborhood that has been targeted by the city for growth.

**B) Houston** – Even with deed restrictions, Houston's style of land management does a poor job on both of these fronts. The primary issue is buffer zones and commercial corridors that are adjacent to single family neighborhoods. These areas are not platted within the same subdivision and cannot be deed restricted as part of a neighborhood. The hope is that the market will respond to the verdict from the Ashby case and will in the future be more sensitive to local context.

## **III. Helps achieve the goals of good planning specifically, economy, equity, ecology and livability:**

**A) Zoning** – Zoning regulations can help achieve all of these goals, not necessarily in the same place, but within a region zoning can promote and help achieve all four of the goals of good planning. In this respect, it is up to the planner to strike the proper balance between the four often-competing goals.

**B) Houston** – Houston’s bottom-up market based approach to planning has excelled at achieving the twin goals of economy and equity. As for livability and ecology, historically Houston has done poorly in both of these realms but recent efforts and new emphasis on improving quality of life are beginning to take root.

#### **IV. Hinder or encourage market forces:**

**A) Zoning** – In general, it hinders market forces, but at the same time can be used to encourage market forces. As opposed to Houston’s approach, traditional zoning has a much larger role in shaping and defining the market spatially as well as the extent to which the market can maneuver within each district.

**B) Houston** – The typical gut reaction and historical knowledge suggest Houston’s approach encourages market forces. However, as minimum lot size restrictions become more popular and ordinances begin to pile up, market forces could become hindered in the future. It is yet to be determined how recent changes to Chapter 42 (Covered in section 3) of the city’s code of ordinances, which allows up to 500 homes in a neighborhood to require minimum lots sizes for all new developments will affect future growth patterns.

#### **V. Allows for flexibility over the short and long run**

**A) Zoning** – A codes flexibility can change depending on context and the type of code, but in general zoning ordinances are flexible in that new overlay districts can be added to satisfy emerging trends. But, it is difficult to perform a comprehensive update and rewrite of an entire zoning code.

**B) Houston** – In the short term, Houston’s land management strategy is flexible, but as with the criteria relating to market forces, the long run trends look less promising. The city’s lack of land use efficiency and expansion of deed restrictions on minimum lot size, which will further encourage sprawl, appears to be a poor long run strategy.

#### **VI. Issues of governance**

**A) Zoning** – As previously mentioned, zoning is a top-down land use strategy and so is open to coercion and regulatory capture, thus creating opportunities for arbitrage. Also, the process of rezoning can be long, arduous and political, with many stakeholders competing for their preferred policy outcome.

**B) Houston** – Houston’s method of regulation is bottom-up and has not been validated through the courts as a legal system of land use regulation. Because the city uses public power

to fulfill a private purpose (Mixon 2011), issues arise where officials respond to complaints in ad-hoc ways that distinctly favor the rich and affluent. Further, city hall is open to capture by special interest groups, mostly comprised of white wealthy business owners.

## VII. Conflict Resolution

**A) Zoning** – Conflict resolution is straightforward with traditional zoning. In almost all cases, there is a board that is part of the City Planning Commission that rules on the majority of land use issues that may arise. These issues include zoning variances, plat approval changes, issues of permitting and changes to current zoning districts.

**B) Houston** – Houston has historically favored developers over residents, using whatever tools at its disposal to appease developer needs. But as evidenced by the Ashby case that could be on the verge of change. Houston does not have a typical board that rules on land use disputes outside of the city's plat approval power. If the city had zoning, the fight over the Ashby case would have never wound up in district court and would have been settled early on

## 7) Conclusion –

Houston is achieving desirable planning goals in a different way than other cities by solving the collective action problem with its unique bottom-up approach. If Houston's system had failed to separate undesirable uses, protect neighborhood character and bolster property values, the city would have voted for zoning long ago. Because that is not the case, one can infer that the people of Houston believe that their current method of land use regulation is effectively solving the issues that zoning is meant to solve.

This thesis acknowledges that both methods of regulating land use have their strengths and weakness when it comes to achieving the goals of good planning. Zoning is a predictable and effective way to tackle all four of planning's overarching goals. The difficulty is in striking the proper balance between each goal in a manner that will most benefit the community

being served. If a city's primary goal is realizing economic growth and rapid development, zoning is probably not the answer. To achieve the goals of equity, ecology and livability, it is necessary to sacrifice a portion of potential economic development. To me, this is the essence of planning: accepting the reality that if a city only focuses on economic growth; the other three goals of equity, ecology and livability will suffer. Thus, when striving to accomplish a particular goal, the other three must always be kept in mind. In other words, a narrow focus is okay as long as one never loses sight of the bigger picture.

The Houston case study may be particularly helpful for cities looking to expand their population. By focusing exclusively on economic growth, a city is able to attract new residents. Until it reaches a state of maturity that is sustainable, then zoning can help redistribute the impacts of unbridled capitalism and economic growth. Because it is difficult for any

municipality to shed rules and regulations, the Houston wait and see approach appears to be a reasonable and prudent strategy for developing a healthy functioning city. By adopting a phased strategy for implementing regulations, a city is able to maximize the long-term benefits of planning and zoning, while not arbitrarily constraining a city's economic potential in the short run before that potential has an opportunity to manifest itself.

It is yet to be seen whether or not a bottom-up approach can achieve an equitable balance of the four goals of planning in the long run. Unfortunately, Houston's method of regulation is the only notable example of such an approach but one could imagine other ways of accomplishing the goals of planning using a bottom-up strategy.

More research needs to be conducted on alternative approaches to solving the collective action problem that use a bottom-up approach. This type of approach must emphasize private property rights and empower individuals and small groups to decide their own fate. Other questions that this thesis does not tackle but are related to Houston's approach is whether or not the bottom-up approach will always lead to sprawl? Can this framework be useful for complex dense city arrangements? Also, in the face of strong private property rights is it possible to build an effective transit system that includes light and commuter rail? The answer to these questions would shed light on the overarching question of whether or not Houston's approach can be used to tackle all four goals that good planning strives to achieve?

As of now the answer appears to be no it cannot, but only time will tell if Houston's novel land use strategy will be effective for the next 100 years, or if the city will ultimately be forced to revert to zoning as the city becomes more densely populated and requires stronger regulations to maintain a well functioning city.

*"As Houston becomes more and more urbanized and denser, perhaps Houston should reconsider whether zoning is appropriate for this City."*

Hon. Randy Wilson  
Judge 157th Dist. Court

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